IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.1219 OF 2004
IN
SECOND APPEAL NO.336 OF 1998

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders.

Shri N.V.Walawalkar for Shri G.H.Keluskar for the Applicants.

CORAM : ABHAY S.OKA, J.

DATED : 3rd Sept., 2004.

P.C.:

1. Heard Shri Walawalkar for the Applicants, who are the Appellants in the Second Appeal. The Applicants are the legal representatives of the deceased Appellant in the Second Appeal. The Appellant in the Second Appeal has expired on 20th July 2001.

2. On 4th March 2002 conditional order was passed in the Second Appeal as paper book and decree forms were not filed. In paragraph 4 of the Civil Application it is stated that the paper book and decree forms were filed. However, the year of the Second Appeal was wrongly mentioned in the paper book and decree forms as 1986 instead of 1988. Shri Walawalkar pointed out that the mistake in typing the year was only in the index of the paper

book. Shri Walawalkar pointed out that apart from the objection regarding non-filing of the paper book and decree forms, there was no other objection. Only because there was an error in typing the year of the appeal on the paper book, the office treated the conditional order as operative and the Second Appeal was dismissed.

3. From the averments in the Application, it is clear that the Advocate appearing for the Appellant was not aware that on 20th July 2001 the Appellant expired. Only after one of the Applicants, namely Applicant No.7, who is the legal representative of the original Appellant, approached the Advocate, he took search and found that the Second Appeal has been shown as dismissed and at that time Applicant No.7 disclosed about the death of the original Appellant.

4. Shri Walawalkar submitted that unless the Second Appeal is restored, an application cannot be made by the Applicants for bringing them on record of the Second Appeal. He states that the said application will be filed within a period of two weeks from today.

5. Hence I pass the following order:

(i) Civil Application is allowed in terms of

prayer clauses (d) and (e). Liberty to the Applicants to take out separate Application for the prayers (a) to (c).

(ii) The Applicants are directed to correct the year of the Second Appeal in the paper book and decree form within a period of two weeks from today.

(iii) Office is directed to issue notice to the Respondents in the Second Appeal intimating them that the Second Appeal has been restored to file.

(iv) No order as to costs.

Judge.